IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-HC-2101-BO

UNITED STATES OF AMERICA, Petitioner, v. JEFFREY NEUHAUSER, Register Number 43446-083, Respondent.	))))))))))	PETITIONER’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby files the following Proposed Findings of Fact and Conclusions of Law:

I. PROPOSED FINDINGS OF FACT

A. Respondent has Engaged or Attempted to Engage in Sexually Violent Conduct or Child Molestation.

1. Between 1967 and 1998, respondent was convicted of, or admitted to engaging or attempting to engage, in acts of sexual violence or child molestation involving 13 to 15-year-old boys.

2. The first conviction followed an incident in June, 1967, when respondent attempted sexually assault a 14-year-old boy at knife-point. (Gov. Ex. 11 pp. 8-9).

3. At that time, respondent identified a 14-year-old boy to whom he was sexually attracted. Respondent stalked the boy’s residence, gleaning enough information to allow

respondent call the boy and arrange a meeting with the boy, outside of the boy's home. When the boy came out of the home, respondent bound the boy at knife-point, blindfolded him, and led him to a sleeping bag respondent previously had placed on the ground. (Gov. Ex. 11 p. 8).

4. Respondent then began to undress the boy with the intent to sexually assault him. Respondent testified his intent was to fondle the boy's genitals. (Deposition of Respondent at 20). The records indicate respondent attempted to engage in anal sex with the boy. (Gov. Ex. 11 p.8). Respondent stopped the assault when the boy informed respondent that the boy had a venereal disease. (Gov. Ex. 11 p. 8).

5. Two months later, respondent attempted to contact the 14-year-old boy a second time to arrange another meeting. The boy notified his father, who called the police. Authorities apprehended respondent at the boy's house and charged him with attempted sodomy. (Gov. Ex. 11 pp. 8-9). Upon his arrest, respondent had in his possession, among other things, a knife. (Gov. Ex. 11 p. 9).

6. On April 2, 1968, respondent pleaded guilty to Assault and Battery. He was sentenced to two years of incarceration, which was suspended, and two years of probation. (Gov. Ex. 11 p. 8).

7. The second act of sexual violence or child molestation

occurred in July, 1983, when respondent was caring for a 15-year-old boy while the boy's parents were traveling. (Gov. Ex. 11 p. 10). While the boy was sleeping on the floor, respondent removed the boy's pants and began to fondle the boy's genitals. (Gov. Ex. 8 at Bates #1370). While doing so, respondent told the boy he loved him. (Gov. Ex. 8 at Bates #1371).

8. Two years later, the boy's father reported the incident to police, and respondent was questioned regarding the incident. Respondent admitted the alleged events occurred during a weak moment. (Gov. Ex. 8 at Bates #1367). Respondent was arrested and charged with Indecent Liberties with a Minor. (Gov. Ex. 8 at Bates #1368).

9. Respondent was convicted of Contributing to the Sexual Delinquency of a Minor on November 11, 1985, and sentenced to 12 months of probation. (Gov. Ex. 11 p. 9).

10. From approximately 1996 to 1998, respondent engaged in internet conversations, including conversations of a sexually explicit content, with hundreds of teenage boys. (Gov. Ex. 2 p. 12; Deposition of Respondent at 52-53).

11. In 1997, respondent engaged in internet conversations with a 13-year-old boy named Daniel. In October, 1997, respondent drove to Daniel's home and engaged in oral sex with the boy. (Gov. Ex. 13 p. 3).

12. From November, 1997, to March 1998, respondent continued

to engage in sexually explicit internet conversations with Daniel. Respondent traveled to meet Daniel on at least two other occasions, during which he and the boy engaged in oral and anal sex. Respondent also took sexually explicit pictures of Daniel. Respondent mailed a sexually explicit photograph of Daniel to one of respondent's acquaintances. (Gov. Ex. 13 p. 3).

13. In July to November, 1998, respondent engaged in multiple internet conversations with another individual, "Billy," who respondent believed to be a 14-year-old boy. The conversations included sexually explicit content, and respondent identified specific sexual acts in which respondent and "Billy" could engage. (Gov. Ex. 11, pp. 4-5).

14. In the latter part of October or early November, 1998, respondent engaged in internet conversations with yet another 14-year-old boy, Timothy. On December 8, 1998, respondent drove to meet Timothy, and engaged in mutual oral sex with the boy. (Gov. Ex. 14)

15. Eight days later, on December 16, 2011, respondent travelled from Maryland to Virginia to meet "Billy." At the designated meeting place, law enforcement officers arrested respondent. (Gov. Ex. 11 pp. 5-6).

16. On March 26, 1999, respondent pleaded guilty to Interstate Travel to Engage in a Sexual Act with a Minor, related

to respondent’s attempt to meet “Billy.” The United States District Court for the Eastern District of Virginia sentenced respondent to 18 months of imprisonment and three years of supervised release. (Gov. Ex. 9).

17. Thereafter, on May 24, 1998, respondent was charged with an eight-count indictment in connection with his sexual activity with the 13-year-old boy, Daniel. (Gov. Ex. 13, pp. 1-2).

18. On November 15, 1999, respondent pleaded guilty to Interstate Travel with Intent to Engage in Sex with a Minor and Distribution of a Visual Depiction of a Minor Engaged in Sexually Explicit Conduct. The United States District Court for the District of Maryland sentenced respondent to 109 months of imprisonment and five years of supervised release. (Gov. Ex. 12).

19. The records also show that respondent was a suspect in a 1966 investigation into the murder and assumed sexual assault of a 9-year-old boy. The investigation commenced after respondent’s 1967 arrest, and as a result of the similarities between the offense respondent committed against the 14-year-old-boy, the evidence at the murder scene of the 9-year-old boy, and the proximity of the two crime scenes. (Gov. Ex. 11 pp. 10-11). The investigation into this offense resumed after respondent’s 1985 arrest for molesting the 15-year-old boy. (Gov. Ex. 2 p. 11).

The records further show respondent was investigated in connection with child murders or disappearances in Illinois in 1985 and California in the mid-1990's. (Gov. Ex. 2 p. 11; Respondent's Deposition at 55-56).

20. Four experts in the field of forensic psychology - Dr. Gary Zinik, Dr. Manuel Gutierrez, Dr. Richard Wollert, and Dr. Diane Lytton - reviewed respondent's records, produced forensic evaluation reports, and offered opinion testimony in this case. All four experts agreed that respondent has engaged or attempted to engage in sexually violent conduct or child molestation.

21. The Court concludes, by clear and convincing evidence, that respondent has engaged in sexually violent conduct or child molestation, based the conduct related to his convictions in 1967, 1985, and 1999.

B. Respondent Suffers from a Serious Mental Illness, Abnormality or Disorder.

22. The four experts, listed above, offered opinions as to whether respondent suffers from a serious mental illness, abnormality or disorder.

23. Two of the experts, Dr. Zinik and Dr. Gutierrez, diagnosed respondent with Paraphelia Not Otherwise Specified, Hebephilia. (Gov. Ex. 2 p. 16; Gov. Ex. 5 p. 2).

24. Dr. Zinik reported that "according to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised ("DSM-VI-TR"), paraphilias involve

‘recurrent, intense sexually arousing fantasies, urges, or behaviors generally involving 1) nonhuman objects, 2) suffering or humiliation of oneself or one’s partner, or 3) children or other nonconsenting persons.’ The sexual preoccupation must occur over a period of at last 6 months and cause significant distress or impairment in social, occupational, or other important areas of functioning.” (Gov. Ex. 2 p. 16). Doctor Zinik further explained that “[Paraphelia Not Otherwise Specified (“Paraphelia NOS”)] is a residual category which includes all other paraphilias that do not meet the diagnostic criteria for the eight specific paraphilias listed in the DSM-VI-TR.” Id.

25. Doctor Zinik stated that Hebephilia is a “sexual preference for pubescent minors” that would correctly be diagnosed under the Paraphelia NOS category. (Gov. Ex. 2 p. 16).

26. In his report and in his testimony before this Court, Dr. Zinik explained that pubescent males are those who are in the stage of sexual development that corresponds with the onset of puberty. In this stage, hormones have triggered the process of sexual maturation, such as the growth of pubic hair and, in males, the ability to ejaculate. (Gov. Ex. 2 p. 17). Doctor Zinik described the Tanner Scale, a scale of sexual maturation that was developed by a British pediatrician, Dr. James Tanner. Doctor Zinik explained that pubescence occurs during

Tanner Stages 2 and 3, and generally corresponds to children between the ages 11 and 14. Id.

27. Doctor Zinik reported and testified that respondent has had a sexual preference for pubescent boys since at least age 15. (Gov. Ex. 2 p. 17). Doctor Zinik reported and testified that respondent still fantasizes about his sexual encounters with pubescent boys and masturbates to those fantasies. Id. Doctor Zinik observed that respondent has committed, been prosecuted for and convicted of acts of sexual violence or child molestation against boys between the ages of 13 and 15. (Gov. Ex. 2 p. 18).

28. In his testimony, Dr. Zinik identified several scholarly works supporting Hebephilia as a valid diagnosis. Specifically, he identified the work of James Cantor, who has collected many articles showing scholarly research and data on samples of hebephiles. The articles include research by: Beier, et al., in the Journal of Forensic Psychiatry; Brown, et al., in Sexual Abuse: A Journal of Research & Treatment; and Studer, et al., in the International Journal of Law and Psychiatry.

29. Doctor Gutierrez agreed that respondent suffers from Paraphelia NOS, Hebephilia, based on respondent's admitted attraction to pubescent boys and his history of sexual offending against such boys. (Gov. Ex. 5 p. 2).

30. Doctor Gutierrez reported that respondent would not qualify for the diagnosis of Pedophilia, based on the age of children to whom he is sexually attracted, so Paraphelia NOS is the proper DSM-IV-TR diagnostic category. (Gov. Ex. 5 p. 3). Doctor Gutierrez used the specifier “Hebephilia” as a descriptor to distinguish respondent’s paraphilia from the others that may fall under the Paraphelia NOS category. Doctor Gutierrez opined that hebephilia was commonly accepted and used by mental health professionals who diagnose and treat mental disorders. Id.

31. Doctor Wollert did not diagnose respondent as suffering from a mental illness, abnormality or disorder, and reported he did not believe Paraphelia NOS (Hebephilia) is a proper diagnosis for use in civil commitment proceedings.

32. In his testimony, Dr. Wollert agreed that hebephilia could be used as a diagnosis for purpose of treatment of sex offenders. Nevertheless, he testified he was on the “warpath” to fight against using the diagnosis in civil commitment proceedings.

33. Doctor Wollert acknowledged that proposed revisions to the DSM-IV-TR contain a recommendation that the 2013 revision of the manual include a hebephilic type of paraphilia.

34. In her testimony, Dr. Lytton agreed that respondent had a sexual attraction to pubescent boys, as young as 13 years old, and that he fantasized about the boys and masturbated to the fantasies. She also acknowledged that respondent acted on his sexual urges by committing acts of sexual violence or child molestation.

35. Doctor Lytton testified, however, that respondent's sexual attraction was not deviant and therefore could not be diagnosed as a mental disorder. She explained that attraction to post-pubescent children was not deviant because, in other cultures and historically in the United States, adults were attracted to and married teenagers.

36. Doctor Lytton further explained that, in ancient history, the life expectancy was not much greater than adolescence, so an attraction to adolescents was necessary to propagate the species.

37. Based on her understanding, Dr. Lytton testified that a person who experienced sexual urges and fantasies about 13-year-old children, and who acted on those urges and fantasies, could not be diagnosed with a serious mental illness, abnormality or disorder.

38. Doctor Lytton acknowledged that a federal appellate court had ruled that Hebephilia qualified as a serious mental disorder for purposes of the Adam Walsh Act. See United States v. Carta, 592 F.3d 34 (1st Cir. 2010).

39. The Court finds the reasoning in the Carta decision to be persuasive authority and therefore discounts the testimony and opinions of Drs. Wollert and Lytton with respect to the diagnosis of respondent's serious mental illness, abnormality or defect. The Court gives greater weight to the testimony and opinions of Dr. Zinik and Dr. Gutierrez and finds, by clear and convincing evidence, that respondent suffers from a serious mental disorder, namely, Paraphelia NOS, Hebephilia.

C. As a Result of a Serious Mental Disorder, Respondent Will Have Serious Difficulty in Refraining from Sexually Violent Conduct or Child Molestation if Released.

40. Doctors Zinik and Gutierrez opined that, as a result of his serious mental disorder, respondent would have serious difficulty in refraining from sexually violent conduct or child molestation.

41. Doctor Zinik used three actuarial tools to assess static factors relevant to respondent's risk of re-offense: the Static-99R; the Static-2002R; and the MnSOST-R. He reported these actuarial instruments measure risk factors that are historical and unchangeable in nature, based on the offender's criminal history. (Gov. Ex.2 p. 20).

42. On the Static-99R, respondent received a score of 5. A score of 5 places respondent in the 89.7th percentile, meaning that 89.7% of the offenders studied in the Static-99R scored at or below respondent's score. On this

scale, Dr. Zinik reported that respondent's score corresponds to a group of sex offenders who reoffended at a rate of 19.6% over a 5 year period and 27.7% over a 10 year period. (Gov. Ex. 2 p. 22).

43. On the Static-2002R, respondent also received a score of 5. A score of 5 places respondent in the 77th percentile, meaning that 77% of the offenders studied in the Static-2002R scored at or below respondent's score. On this scale, Dr. Zinik reported that respondent's score corresponds to a group of sex offenders who reoffended at a rate of 16.4% over a 5 year period and 25.1% over a 10 year period. (Gov. Ex. 2 p. 22).

44. On the MnSOST-R, respondent received a score of 7. A score of 7 places respondent in the 77.8th percentile, meaning that 77.8% of the offenders studied in the MnSOST-R scored at or below respondent's score. On this scale, Dr. Zinik reported that respondent's score corresponds to a group of sex offenders who reoffended at a rate of 20% over 6 years, if the offender received community supervision, or 25% over 6 years if the offender did not receive community supervision. (Gov. Ex. 2 p. 22).

45. In his updated forensic report, Dr. Gutierrez also used the Static-99R to assess respondent's static risk factors. (Gov. Ex. 5 p. 3). Similar to Dr. Zinik, Dr. Gutierrez assigned respondent a score of 5. Id.

46. Doctors Wollert and Lytton used an actuarial instrument called the MATS-1 to evaluate respondent’s static risk factors.

47. According to Dr. Wollert, respondent scored a 4+ on the MATS-1, placing him in the “high range.” Doctor Wollert reported, however, that this high score is mitigated by respondent’s age. (Resp. Ex. 1 p. 54). As such, Dr. Wollert reported that offenders in respondent’s age range had a reoffense rate of about 7% over eight years. Id.

48. Doctor Wollert did not consider any other factors outside of the MATS-1, in assessing respondent’s level of risk to reoffend. (Resp. Ex.1, p. 55).

49. Doctor Lytton scored respondent as a 4 or 5 on the MATS-1, placing him in the high category. Based on his age, she reported respondent’s score correlates to a group of offenders with a reoffense rate of about 7% over an eight year period. (Resp. Ex. 3 p. 11).

50. Doctor Lytton reported that in conjunction with the actuarial tools, age is the most relevant factor to be considered when assessing risk. (Resp. Ex. 3 p. 11). She reported dynamic factors are also sometimes considered in assessing risk, but she did not find any factors that would increase the level of risk estimated by the actuarial tool she used. (Resp. Ex. 3 p. 12).

51. Doctors Zinik and Gutierrez identified several dynamic

or psychological factors that have been empirically shown to contribute to a risk of reoffense. Doctor Zinik used the Structured Risk Assessment – Forensic Version ("SRA-FV"), a relatively new assessment tool for assessing dynamic risk factors. According to this tool, respondent falls into the high level of risk or need, suggesting he requires more intense and longer-term treatment interventions. (Gov. Ex. 2 p. 20). The specific risk factors present in respondent's case, according to the SRA-FV, include: a strong sexual preference for pubescent children and his moderate level of sexual preoccupation; his inability to maintain intimate or cohabitating relationship with an adult and his emotional identification with children; evidence of callousness in his behavior toward others and feelings of being wronged; and, a moderate degree of dysfunctional coping. (Gov. Ex. 2 pp. 19-20).

52. Doctor Zinik also accounted for the fact that respondent has been incarcerated for the past 13 years, and therefore considered whether respondent has changed in ways that would increase or decrease his risk. (Gov. Ex. 2 p. 23). With respect to protective factors that may reduce respondent's risk, Dr. Zinik reported that respondent's age was accounted for in the actuarial tools, and reduced his risk estimates on the tools. However, Dr. Zinik noted

that respondent does not have age-related physical limitations or a reduced sex-drive, noting that respondent still masturbates to fantasies of pubescent boys. In addition, Dr. Zinik noted that respondent has never lived in the community without reoffending. Id.

53. Doctor Zinik noted that respondent has not developed a prosocial lifestyle that would serve as a protective factor. (Gov. Ex. 2 p. 23). Respondent has refused sex offender treatment, he has little, if any, family, social and community support, and he has not developed a comprehensive relapse prevention plan. Of note, Dr. Zinik observed that respondent's efforts to secure funding from the Catholic Church for sex offender treatment and his efforts to arrange counseling with a therapist in Baltimore did not yield the type of intensive, structured, and preferably residential sex offender treatment Dr. Zinik opined respondent requires. (Gov. Ex. 2 pp. 23-24).

54. Similarly, Dr. Gutierrez identified a number of dynamic risk factors that show respondent will have serious difficulty in refraining from sexually violent conduct or child molestation. Specifically, Dr. Gutierrez noted the presence of intimacy deficits, attitudes supportive of sexual assault, poor sexual self-regulation, and the presence of anger or hostility problems. (Gov. Ex. 5 p. 4). Doctor Gutierrez also echoed Dr. Zinik's conclusions

that respondent's age was not an additional mitigating factor in his case. Id.

55. Doctor Gutierrez also addressed the codified guidelines to be considered when evaluating whether a person will have serious difficulty in refraining from sexually violent conduct or child molestation. (Gov. Ex. 5 p. 5). These factors include: the person's repeated contact, or attempted contact, with one or more victims of sexually violent conduct or child molestation; the person's denial of or inability to appreciate the wrongfulness, harmfulness, or likely consequences of engaging or attempting to engage in sexually violent conduct or child molestation; interviewing, testing, and other risk assessment tools relied upon by mental health professionals; inability to control conduct such as offending while under supervision, when likely to get caught, statements of intent to reoffend, and admission of inability to control behavior; and, successful completion of or failure to successfully complete a sex offender treatment program. Id.

56. Doctor Gutierrez identified respondent's history of multiple boy victims over a period of 30 years, with at least one victim being molested on several occasions. He identified that, at the time, respondent had not appreciated the wrongfulness or harmfulness of his

conduct. Doctor Gutierrez also noted that respondent has not completed a sex offender treatment program. (Gov. Ex. 5 p. 5).

57. Respondent testified that he now understands his early sex offenses were heinous and coercive. (Respondent's Deposition at 21). He also testified that he rationalized his later sex offenses by claiming the sexual activity with the boys was allegedly consensual. (Respondent's Deposition at 59, 61). Doctor Zinik testified, however, that there is evidence that shows respondent continues to harbor attitudes and rationalizations that suggest he still will have serious difficulty in refraining from child molestation if released.

58. For example, Dr. Zinik reported and testified that respondent was intelligent and adaptive and capable of perpetuating his sexual offenses without detection. (Gov. Ex. 2 pp. 11-12). He opined that as a result, respondent likely had many more boy victims than those for which he was prosecuted. In support of this, Dr. Zinik noted that respondent reported he has had only two sexual relationships with adult males, neither of which lasted as long as a year. (Respondent's Deposition at 51-52; Gov. Ex. 2 p. 12). Yet, respondent reported to Dr. Wollert that he had numerous sexual encounters over a period years with a man in California that respondent called Sean.

(Resp. Ex. 1, p. 21). Doctor Zinik noted respondent's testimony that he prefers to call his boy victims "young men." (Respondent's Deposition at 42). Doctor Zinik further noted that in one of respondent's internet chats with "Billy," respondent stated that he had a 14-year-old "buddy" in California, named Sean, with whom he still conversed. (Gov. Ex. 11 p. 4). Based on these records, Dr. Zinik surmised that Sean was an unreported boy victim.

59. In addition, Dr. Lytton testified that respondent reported sexual contact with boys other than the ones for which respondent was convicted.

60. As further evidence of respondent's rationalization, Dr. Zinik noted that respondent recently testified the only intent for his travel to Virginia was simply to meet the person he thought was a 14-year-old boy. (Respondent's Deposition at 64). Doctor Zinik testified that respondent's contemporaneous conduct with Timothy and Daniel, and the content of respondent's internet chats clearly signaled respondent's intent to engage in sexual activity with "Billy," the person respondent thought was a 14-year-old boy.

61. Doctor Zinik reported that respondent's continued and escalating offense conduct during the mid-1990's, in the context of what respondent knew at that time, showed additional evidence of respondent's serious difficulty

in refraining from child molestation. (Gov. Ex. 2 p. 18). Specifically, Dr. Zinik noted respondent's testimony that he was warned by a federal judge that his internet activity was not private and further that respondent was aware of law enforcement stings aimed at capturing internet predators. (Respondent's Deposition at 54, 63). Yet, respondent persisted in his online activity and in traveling to meet with and engage in sexual activity with pubescent boys.

62. Respondent has acknowledged that he has a "screaming void to be filled". (Resp. Ex. 3 p. 4; Respondent's Deposition at 68). In a letter to his sentencing court in Virginia, respondent characterized his sexual activity with pubescent boys as "compulsions" for which he needed treatment. (Gov. Ex. 11 p. 7). This characterization echoes the assessment of a mental health counselor that worked with respondent during his incarceration, pending sentencing in 1999, when she described respondent condition as a "sexual compulsion" and his behavior as "inappropriate and impulsive." (Gov. Ex. 11 p. 15).

63. Finally, Dr. Zinik noted that, although remaining essentially offense-free in prison, staff recently confiscated the book "Invisible Chains" from respondent's cell. The book recounts a story of a man who kidnapped and sexually assaulted two young boys, one of whom lived

with the man for many years. The book purported to investigate the phenomenon of the paradoxical attachment formed between the man and his boy victim. (Gov. Ex. 2 p. 16). Doctor Zinik opined respondent's interest in the book stemmed from respondent's hebephilic fantasy to form emotional and sexual relationships with pubescent boys. Id.

64. Having considered the evidence offered by the experts, the Court finds by clear and convincing evidence that respondent will have serious difficulty in refraining from child molestation if he is released. The Court gives greater weight to the testimony and findings of Drs. Zinik and Gutierrez who, in addition to the actuarial instruments, considered important dynamic and psychological factors that indicate respondent will have serious difficulty in refraining from child molestation. Of note are the following findings: that respondent has not completed sex offender treatment; that he continues to harbor attitudes that rationalize or minimize his past behaviors and are likely to facilitate future sexual offending; that respondent persisted in offending in circumstances that he knew could result in detection, arrest, prosecution and conviction; that respondent has been unable or unwilling to form adult intimate relationships; that respondent continues to have a

deviant, sexual and emotion attraction to pubescent boys; that respondent’s age has not substantially diminished his sex drive or caused any physical limitations; that respondent lacks a reliable social, psychological and economic support system; and, that respondent does not have a suitable relapse prevention plan.

II. PROPOSED CONCLUSIONS OF LAW

65. The Court finds the Government has proven, by clear and convincing evidence, the following:

    a. That respondent has engaged in sexually violent conduct or child molestation;

    b. That Paraphelia NOS, Hebephilia, qualifies as a serious mental illness, abnormality or disorder for purposes of the civil commitment provisions of the Adam Walsh Act;

    c. That respondent suffers from a serious mental disorder, namely, Paraphelia NOS, Hebephilia; and,

    d. That as a result of the above serious mental disorder, respondent will have serious difficulty in refraining from sexually violent conduct or child molestation if released.

66. Therefore, respondent meets the definition of a sexually dangerous person and the criteria for commitment under 18 U.S.C. § 4248, and is hereby committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4248(d).

Respectfully submitted this 19th day of December, 2011.

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CERTIFICATE OF SERVICE

This is to certify that I have this 19th day of December, 2011, served a copy of the foregoing upon counsel for the respondent by electronically filing the same through the District Court's CM/ECF Document Filing System.

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